No. 87-611

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

FEDERATION OF LORTON COMMUNITIES,

Petitioner,

v.

MARION BARRY, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT BOARD OF SUPERVISORS OF FAIRFAX COUNTY VIRGINIA

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED

Whether the authority of the Mayor of the District of Columbia to exercise "complete and exclusive control and management" over the Lorton Reservation constitutes "jurisdiction" within the meaning of D.C. Code Ann. § 1-337(c).

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FEDERATION OF LORTON COMMUNITIES,

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BRIEF IN OPPOSITION OF RESPONDENT BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

Respondent Board of Supervisors of Fairfax County, Virginia, by counsel,

respectfully asks this Court to deny the petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Virginia is unreported and is attached as Appendix A.

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported and is attached as Appendix B.

JURISDICTION

Petitioner has invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1) (1987).

STATUTES INVOLVED

This case involves D.C. Code Ann. § 1-337(c) (1981), which is attached as Appendix C.

Other statutes are set forth in the appendix to the petition for writ of certiorari, and are not duplicated herein.

Respondent Board of Supervisors of Fairfax County, Virginia, asserts that no constitutional provisions are involved.1/

1/ The Petitioner suggests that certification under 28 U.S.C. § 2403(a) may be appropriate. (Petition at 2-3) Respondent disagrees. Section 2403(a) is not applicable for three reasons. First, no statute has been declared unconstitutional by the lower courts.

Second, the statute in question, D.C. Code Ann. § 1-337(c), applies only to the District of Columbia and concerns a matter of mere local interest. Keyes v. Madsen, 179 F.2d 40 (D.C. Cir. 1949), cert. denied, 339 U.S. 928 (1950). The Court of Appeals did not publish its decision, signifying that the case does not involve an issue of continuing public interest. United States Court of Appeals for the (footnote cont'd.)

STATEMENT OF THE CASE

Course of Proceedings

Petitioner Federation of Lorton Communities (hereinafter "Federation") filed this action in the United States District Court for the District of Columbia on April 17, 1986, seeking declaratory and injunctive relief against

---

1/ (cont'd)
Fourth Circuit, I.O.P. 36.3 (court's opinion will be published if it involves a legal issue of continuing public interest.)

Finally, interpretation of D.C. Code Ann. § 1-337(c) was the identical issue before the court in United States v. District of Columbia, 788 F.2d 239 (4th Cir. 1986) (the "Glenn Dale case"), in which the United States was a party. The United States did not petition this Court for a writ of certiorari when the Fourth Circuit held that the District of Columbia has "jurisdiction," as that term is used in § 1-337(c), to lease property located in Glenn Dale, Maryland, that is titled in the name of the United States but under the control and management of the District of Columbia. Therefore, it is unnecessary to certify this case to the Attorney General.

Marion Barry, as Mayor of the District of Columbia, in a challenge to his authority to permit the use of the Lorton Reservation as a landfill and to lease a portion of the Lorton Reservation to Fairfax County for construction of an energy/resource recovery facility (hereinafter "E/RR facility").

In October 1986 the case was transferred to the Eastern District of Virginia, and the Board of Supervisors of Fairfax County, the County Board of Arlington County and the City of Alexandria were joined as additional defendants.

The Lorton Reservation is titled in the name of the United States but has been used and controlled by the District of Columbia since its acquisition. A portion of the Lorton Reservation has been used as

an interjurisdictional landfill since 1971. Another portion has been leased by the District of Columbia to Fairfax County as the site for construction of an E/RR facility. The E/RR facility will burn municipal wastes and generate steam that can be used directly or converted into electrical energy.

The trial court dismissed all claims concerning the District's right to use the property as a site for a landfill and an E/RR facility. The trial court found that the land was under the Mayor's "jurisdiction" within the meaning of D.C. Code Ann. § 1-337(c) (1981), relying on the decision in United States v. District of Columbia, 788 F.2d 239 (4th Cir. 1986) (the "Glenn Dale case").

The United States Court of Appeals for the Fourth Circuit affirmed the trial court's decision, holding that the case is "on all fours" with the Glenn Dale case. (App. B-4.) In the Glenn Dale case the court held that land located in Maryland that was titled in the name of the United States was within the "jurisdiction" of the mayor for purposes of D.C. Code Ann. § 1-337(c).

The Federation now seeks writ of certiorari to the Fourth Circuit.

Statement of Facts

The Lorton Reservation was purchased in a series of transactions between 1910 and 1953. The land, which is titled in the name of the United States, has been and is used by the District of Columbia.

The original use of the property was as a workhouse and reformatory, a use which continues through the present date. In addition, the I-95 Resource Recovery, Land Reclamation and Recreation Complex (hereinafter "I-95 Complex") was established on the Lorton Reservation by interjurisdictional agreement in 1971 to serve the solid waste disposal needs of Fairfax County, Arlington County, the City of Alexandria and the District of Columbia.

Since 1971 the landfill has been operated in accordance with interjurisdictional agreements. In addition, a portion of the I-95 Complex has been designated as the site for an E/RR facility. On March 10, 1986, Fairfax County and the District of Columbia entered into an Agreement of Lease

(hereinafter "Lease") for a 22.9-acre site for the E/RR facility. The Lease provides that Fairfax County is responsible for the design, construction, operation and maintenance of the E/RR facility, and further, that the District of Columbia shall be able to contribute solid waste to the facility. The draft lease was forwarded to an attorney for the Land and Natural Resources Division of the United States Department of Justice who reviewed it and informed the Office of the Corporation Counsel for the District of Columbia by letter dated July 25, 1985, that the United States had no objection to the proposed lease with Fairfax County. A copy of the July 25, 1985, letter is attached as Appendix D.

SUMMARY OF ARGUMENT

The only question presented in the Federation's petition is whether the Court of Appeals correctly interpreted the word "jurisdiction" as used in D.C. Code Ann. § 1-337(c).

This case does not merit this Court's review because it presents only a question of interpretation of one subsection of the District of Columbia Code. Furthermore, the titleholder of the property, the United States, has indicated that it acquiesces in the right of the District of Columbia to lease the Lorton property to Fairfax County. The United States has specifically stated that it does not object to the lease that the Federation is challenging. (App. D.)

The Federation attempts to implicate Article I, § 8, clause 17 of the Constitution. However, the Court of Appeals has construed the statute so that it does not violate the Constitution, and the Federation concedes that the United States may constitutionally permit the District of Columbia to lease the property to Fairfax County.

ARGUMENT

THE AUTHORITY OF THE MAYOR OF THE DISTRICT OF COLUMBIA TO EXERCISE "COMPLETE AND EXCLUSIVE CONTROL AND MANAGEMENT" OVER THE LORTON RESERVATION CONSTITUTES "JURISDICTION" WITHIN THE MEANING OF D.C. CODE ANN. § 1-337(c).

A. Introduction.

The question presented in this case, correctly stated by the Court of Appeals, is simply whether Congress' intention that

the District of Columbia exercise "complete and exclusive control and management" over the Lorton Reservation constitutes "jurisdiction" within the meaning of D.C. Code Ann. § 1-337(c). (App. B-3.) That statute, enacted by Congress, authorizes the Mayor of the District of Columbia to lease property belonging to the District or under his "jurisdiction" if it is not then needed for the purpose for which it was acquired.

The United States has delegated to the District of Columbia control and management over the Lorton property. D.C. Code Ann. § 3-106 (1981). The Court of Appeals held that control and management constituted "jurisdiction" for purposes of D.C. Code Ann. § 1-337(c). Therefore, the District of Columbia has the authority to lease the Lorton property.

B. <u>There Are No Special or Important Reasons for Granting Review on Writ of Certiorari</u>.

Review on writ of certiorari is a matter of judicial discretion, and will be granted "only when there are special and important reasons" to do so. Sup. Ct. R. 17. In an attempt to elevate this case from a question of interpretation of one subsection of the District of Columbia Code to a question of constitutional magnitude, the Federation claims that the decision below sanctions a violation of Article I, § 8, clause 17 of the Constitution of the United States.

The Federation argues that "jurisdiction" as used in D.C. Code Ann. § 1-337(c) must refer to the power granted to the United States in Article I, § 8,

clause 17. Respondents contend that "jurisdiction" as used in D.C. Code Ann. § 1-337(c) means control and management. The Court of Appeals ruled for the Respondents in accordance with its decision one year earlier in United States v. District of Columbia, 788 F.2d 239 (4th Cir. 1986).[2/]

2/ The essential facts and the holding of that case were identical to those of the case at bar. That case involved property in Glenn Dale, Maryland, that is titled in the name of the United States but has been used and controlled by the District of Columbia since its acquisition. When the property was no longer needed for its original purpose as a tuberculosis sanatorium, the District sought to lease it pursuant to D.C. Code Ann. § 1-337(c). The United States sued for ejectment. The United States Court of Appeals for the Fourth Circuit held that the District of Columbia has "jurisdiction" as that term is used in § 1-337(c), and was therefore authorized to lease it.

Only if the Court had accepted the Federation's position and ruled that the word "jurisdiction" as used in § 1-337(c) refers to Article I, § 8, clause 17 power could any constitutional issue exist.

The Federation's constitutional claim is a ruse, included in an attempt to exaggerate the importance of this case and disguise the fact that the only issue in this case is the interpretation of a subsection of the District of Columbia Code. This Court does not generally review lower court decisions which are limited solely to interpretation of the District of Columbia Code. Del Vecchio v. Bowers, 296 U.S. 280, 285 (1935).

An additional reason to deny certiorari in this case is that the titleholder of the property, the United

States, has accepted the Fourth Circuit's interpretation that D.C. Code Ann. § 1-337(c) empowers the Mayor to lease out federal property within the District's management and control. As a party to the Glenn Dale case, the United States could have petitioned this Court for writ of certiorari. It did not.

Furthermore, the Glenn Dale opinion specifically stated that the District only had "jurisdiction" as used in D.C. Code Ann. § 1-337(c) until Congress legislated to the contrary. United States v. District of Columbia, 788 F.2d 239, 242 (4th Cir. 1986). Eighteen months have passed since the Glenn Dale decision, and the United States has not enacted any legislation that would change the result

of that case and restrict the authority of the District of Columbia over federal property it manages.

The United States always has had full legislative power to protect its interests in its property. It can revoke or restrict the authority of the District of Columbia over the Lorton property or any other federal land at any time. In fact, the lease at issue in this case explicitly recognizes that it can be terminated "by an Act of Congress at any time." (Agreement of Lease, ¶ 18.)

Finally, the United States has stated specifically that it does not object to the lease at issue in this case. The United States was consulted prior to the execution of the lease. The United States Department of Justice informed the District

of Columbia Corporation Counsel that it had no objection to the proposed lease with Fairfax County. (App. D.)

C. The Decision of the Court of Appeals was Correct on the Merits.

Words in a statute may have more than one meaning. Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). If a statute can be interpreted to have different meanings, one constitutional and one unconstitutional, courts are required to choose the constitutional interpretation. Califano v. Yamasaki, 442 U.S. 682, 693 (1979).

The Federation's only argument is that the Court of Appeals misinterpreted the word "jurisdiction." It asserts that the word can only mean legislative

authority. As the Federation recognizes, the United States holds property both as proprietor and sovereign. (Petition at 20.) The Federation argues that Article I, § 8, clause 17 of the United States Constitution prohibits the United States from delegating its legislative authority--sovereignty--to the District of Columbia. However, the Federation acknowledges that the Court of Appeals interpreted the word "jurisdiction" in D.C. Code Ann. § 1-337(c) to refer to proprietary interests, not to sovereignty. (Petition at 22.) Thus the Court of Appeals has construed the statute so that it does not violate the Constitution.

The Federation concedes that the United States' exercise of its proprietary powers is not subject to the consent of

the state in which the property is located. (Petition at 20-21.) The Federation concedes that the United States may delegate to the District of Columbia proprietary authority over federal property (Petition at 20-21), and that the United States may permit the District of Columbia to rent out surplus property belonging to the United States. (Petition at 22.) That is exactly what D.C. Code Ann. § 1-337(c) allows. Thus, there is no constitutional issue.

The Federation's actual argument is that Congress did not intend to allow the District of Columbia the power to lease the Lorton property. However, the Court of Appeals' interpretation of the word "jurisdiction" fulfills the intent of

Congress in enacting D.C. Code Ann. § 1-337(c): to allow the District to use property in its possession and control for municipal purposes rather than have it sit idle. That interpretation is correct.

CONCLUSION

The decision of the Court of Appeals for the Fourth Circuit is correct, and there are no special or important reasons for this court to review that decision. Therefore, Respondent Board of Supervisors of Fairfax County, Virginia, respectfully asks that the petition for writ of certiorari be denied.

Respectfully submitted,

David T. Stitt
County Attorney

Robert Lyndon Howell
Senior Assistant County Attorney
Counsel of Record for Respondent
Board of Supervisors of
Fairfax County, Virginia

Marilyn McHugh
Assistant County Attorney

Erin C. Ward
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OCTOBER 27, 1987

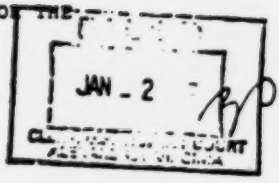
PROOF OF SERVICE

I hereby certify that three copies of the foregoing were mailed, postage prepaid, to Philip L. Chabot, Jr. Suite 800, 1990 M Street, N.W., Washington, D.C. 20036, counsel for Petitioner, and to Lutz Alexander Prager, Assistant Deputy Corporation Counsel, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, John W. Henderson, Assistant City Attorney, 301 King Street, Alexandria, Virginia 22314, and Ara L. Tramblian, Assistant County Attorney, 1400 North Courthouse Road, Arlington, Virginia 22201, this 27th day of October, 1987.

Robert Lyndon Howell
Robert Lyndon Howell

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



FEDERATION OF LORTON COMMUNITIES,

Plaintiff,

V.

MARION BARRY, et al.,

Defendants.

CIVIL ACTION NO. 86-1298-A

ORDER

For the reasons stated from the bench, the court concluding that insofar as Counts I and II of the Amended Complaint are concerned, the land in question was acquired for the purpose of being used by the District of Columbia for prison facilities, and the Mayor and District of Columbia have at least as much jurisdicition and control over the area used as a landfill, and to be used for the construction of an incinerator, as did those entities have over the property involved in United States v. District of Columbia, 788 F.2d 239 (4th Circuit 1986), and that the land to be used for the construction of an incinerator is thus within the meaning of D. C. Code § 1-337(c) (1981); that insofar as Count III is concerned the proposed project is not a major federal action since it requires no approval of a federal agency or official, nor is it to be constructed from federal funds, and thus no environmental impact statement is required,

42 U.S.C. § 4332(c); that insofar as Count IV is concerned the underlying purpose of any financial commitment of Fairfax County, Virginia, is to benefit the general public and thus there is no violation of Article X, Section 10, of the Virginia Constitution, Troy v. Walker, 218 Va. 739, 241 S.E.2d 420, 425 (1978); Harrison v. Day, 200 Va. 764, 107 S.E.2d 594, 620 (1959); Almond v. Day, 197 Va. 782, 91 S.E.2d 660, 667 (1956); and insofar as Count V is concerned, the conclusory assertions, without more, that the conduct of the defendants violates the Water Pollution Control Act, the Clean Air Act, the federal common law of pollution, constitutes a common law nuisance and deprives plaintiff's members of rights protected by the Fourteenth Amendment of the Constitution, do not state claims upon which relief can be granted, it is hereby ORDERED that:

1. Counts I, II, III and IV of the Amended Complaint are dismissed with prejudice.

2. Count V of the Amended Complaint is dismissed without prejudice.

3. This action is dismissed.

/s/ T.R.B.

United States District Judge

Alexandria, Virginia
January 2nd, 1987

APPENDIX B

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 87-1525

Federation of Lorton Communities,

Plaintiff - Appellant,

versus

Marion Barry, as Mayor of the District of Columbia; The Board of Supervisors of Fairfax County; the Board of Supervisors of Arlington County; City of Alexandria,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., Chief District Judge. (CA-86-1298-A).

Argued: May 6, 1987 - Decided: July 20, 1987

Before WINTER, and CHAPMAN, Circuit Judges, and WISDOM, Circuit Judge for the Fifth Circuit, sitting by designation.

Philip Louis Chabot, Jr. for Appellant; Lutz Alexander Prager, Assistant Deputy Corporation Counsel; Robert Lyndon Hovell, Senior Assistant County Attorney (David T. Stitt, County Attorney; Frederick D. Cooke, Jr., Acting Corporation Counsel; Charles L. Reischel, Deputy Corporation Counsel Appellate Division; Philip G. Sunderland, City Attorney; John W. Henderson, Assistant City Attorney; Charles G. Flinn, County Attorney; Ara L. Tramblian, Assistant County Attorney on brief) for Appellees.

PER CURIAM:

The appellant, plaintiff below, challenges the authority of the District of Columbia to rent out part of the land, titled in the name of the United States, that is located in Virginia and that the District controls. The District controls the land for use as its Lorton prison facility; it proposes to lease part of this land to the County of Fairfax to supply the site for construction of a municipal waste incinerator, and it proposes to allow the District and several northern Virginia counties to use part of the Lorton Reservation as a regional municipal waste landfill. The District claims authority for this lease under D.C. Code § 1-337(c) (1981), which authorizes the mayor "within his discretion to rent any building or land belonging to the District of Columbia or under the jurisdiction of the Mayor, or any available space therein, whenever such building or land, or space therein, is not then required for the purpose for which it was acquired . . . ." The district court held that the Mayor was empowered with the authority to provide this lease.

In 1946, Congress established a Department of Corrections for the District, which was to have "charge of the management and regulation" of the Lorton prison complex. The Department replaced a Board established in 1926 to exercise "complete and exclusive control and management" of the facilities. In 1974, as part of the Congressional grant to the District of "home rule," Congress granted to the mayor all powers previously exercised by the Board of Commissioners which had

formerly governed the District, which powers included supervision over the Department of Corrections.

Thus the question presented in this case is whether the mayor's authority, reposited for administrative purposes in the Department of Corrections, to exercise "complete and exclusive control and management" over the Lorton complex constitutes having "jurisdiction" over the properties, thus permitting the mayor under § 1-337(c) to lease any available space not required for the fulfillment of the purpose for which it was originally acquired.

This court in United States v. District of Columbia, 788 F.2d 239 (4th Cir. 1986) (the "Glenn Dale" case), held that the District's right to possession and use of some Maryland land, which land, like the Lorton property, was titled in the name of the United States, equaled "jurisdiction" under D.C. Code § 1-337.

> Section 1-337(c) has no language stating, or even suggesting, that property owned by the United States is excluded. Had Congress wished to limit the scope of the power to property owned by the District, it needed to use only the phrase "belonging to the District of Columbia" and could have omitted the phrase "under the jurisdiction of the Mayor."

Id. at 241.

In the Glenn Dale case, Congress had authorized the District, "under the direction and control of the Department of Human Services of the District of Columbia and subject to the supervision of the Mayor of the District of Columbia," to construct and operate a facility for use as a children's

tuberculosis sanatorium. Thus the language Congress used in authorizing the District in the Glen Dale case to acquire the land is identical to that used regarding the Lorton property, and that language was found in Glenn Dale to empower the mayor to exercise "jurisdiction" over the property pursuant to § 1-337(c).

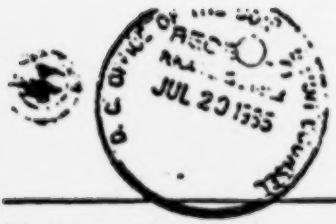
The Glenn Dale case is on all fours with that presented, and thus is dispositive. The judgment of the district court is affirmed.

AFFIRMED.

APPENDIX C

(c) *Leasing powers.* — The Mayor of the District of Columbia is authorized and empowered within his discretion to rent any building or land belonging to the District of Columbia or under the jurisdiction of the Mayor, or any available space therein, whenever such building or land, or space therein, is not then required for the purpose for which it was acquired, and to rent any used personal property belonging to the District of Columbia which is not then needed for the purpose for which it was acquired: Provided, that nothing contained in this subsection shall have the effect of changing in any manner Public Law No. 732, 74th Congress, entitled "An Act to authorize the operation of stands in federal buildings by blind persons, to enlarge the economic opportunities of the blind, and for other purposes", approved June 20, 1936 (20 U.S.C. §§ 107 — 107f).

APPENDIX D



U.S. Department of Justice
Land and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 25, 1985

Mr. James B. McDaniel
Deputy Corporation Counsel
District of Columbia
Public Works Division
Room 300, Presidential Building
415 12th Street, N. W.
Washington, D. C. 20004

Dear Mr. McDaniel:

Thank you for your letter of July 8, 1985, informing me of the District of Columbia's plans to enter into a lease agreement with Fairfax County, Virginia, as to a portion of the Lorton Reformatory Tract, which is titled in the name of the United States, and for the opportunity to determine any implications the lease may have for the United States. The lease will allow Fairfax County to build and operate an energy/resource recovery facility on the subject property.

The question of the authority of the District of Columbia to lease portions of the Lorton Reformatory Tract was addressed by this Department in September 1980 in connection with a then-proposed lease. The Department, through its Office of Legal Counsel, issued the opinion that the Mayor has the authority to lease any land purchased under the statutes authorizing purchase of the Lorton site which is still part of the Lorton Reformatory site. This Department, therefore, interposes no objection to the proposed lease with Fairfax County.

With respect to the appropriateness of the particular terms of the proposed lease, this Department defers to the judgment of your office.

I appreciate your coordinating with the Department of Justice in this matter.

Sincerely,

F. Henry Habicht II
Assistant Attorney General
Land and Natural Resources Division